

LEGAL PROTECTION FOR LAND OWNERS WHO HAVE A LAND OWNERSHIP CERTIFICATE

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ARTICLE INFO

History of the article:

Received: 08/01/2024

Corrected: 16/01/2024

Accepted : 25/01/2024

Published: 25/01/2024

Keywords:

Unlawful, Land, Land Certificate.

ABSTRACT

One of the causes of various land disputes is related to land registration, for example, disputes over the true owner of a plot of land. A party claiming ownership of the land files a lawsuit in court. The court then decides who the rightful owner is. Legal protection for landowners whose land has been certificated in another person's name is granted to the true landowner based on evidence of legal ownership. This is because the rightful landowner possesses legal data and directly possesses the land. This means that the landowner has the right and freedom to control the land, and ownership vests in their heirs as long as it is not transferred to another party. Legal remedies taken by landowners to resolve land disputes involving unilateral ownership and to issue land ownership certificates include filing for cancellation of the certificate through lawsuits in the District Court or the cancellation of the certificate in the State Administrative Court. However, this does not mean that land title certificates do not guarantee legal certainty, as lawsuits or certificate cancellations are separate issues from legal certainty. As long as there is no judge's decision disputing the veracity of the legal and physical data on the certificate, the certificate is considered valid.

1. Introduction

Land use in the Republic of Indonesia is a state policy, outlined in various laws and regulations. This can be seen from the meaning contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This basic provision demonstrates the fundamental principle of the relationship between the state and citizens regarding land. Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), which states: "Based on the provisions of Article 33 paragraph (3) of the Constitution and matters referred to in Article 1, the land, water, and airspace, including the natural resources

contained therein, are controlled at the highest level by the state, as the organization of power for all the people." The existence of land is inseparable from human life, as stated by Adrian Sutedi, who stated that "in human life, the existence of land is inseparable from all human actions, because land is the place where humans conduct and continue their lives."

Humans have always sought to own and control land, as it is essential for life. Efforts to acquire land can be accomplished in various ways. One such method is through buying and selling. In this process, land ownership is transferred from one party to another. The need for land has led the Republic of Indonesia, based on the 1945 Constitution, to guarantee and protect citizens' rights to obtain, own, and enjoy land ownership rights. Land and buildings are objects that play a vital role in human life. Land and buildings, as basic human needs, influence the existence of each individual, as everyone needs a place to live. Land rights play a crucial role in human life. The more advanced a society becomes and the more densely populated it becomes, the more important land rights become. As the Indonesian people's and national economies advance, so does the need for certainty regarding matters related to economic activities. People's land is increasingly involved in these activities, such as buying and selling, leasing, providing credit, and so on. Therefore, the need for legal certainty and certainty in the land sector is increasingly felt. Land ownership rights, as a type of property right, are crucial for the state, nation, and people of Indonesia as an agrarian society. Land, as a basic human resource, faces various challenges, such as:

1. Limited land, both in quantity and quality, compared to the needs that must be met.
2. Shifting patterns of relationships between landowners and landowners as a result of general social changes.
3. Land, on the one hand, has emerged as a crucial economic asset, while on the other, it has become a commercial commodity.
4. Land, on the one hand, must be utilized and exploited for the greatest possible welfare of the people, both physically and mentally, fairly, and equitably, while its sustainability must be maintained.

Land is a basic need, so everyone desires to own it, whether through buying or selling it, or committing an unlawful act of possessing land without legal title. A person can enjoy the fruits of their land if it is unlawfully acquired by another person. Unlawful acquisition of land results in the loss of enjoyment of life, as such an act always results in loss for the person whose land has been acquired.

This is based on Article 1365 of the Civil Code, which states, "Every unlawful act that causes loss to another person, requires the person whose fault caused the

loss to compensate for that loss." The government also regulates unlawful land acquisition through Government Regulation in Lieu of Law Number 51 of 1960 concerning the Prohibition of Land Use Without the Permission of the Authorized Person or Their Authorized Representative. Article 2 prohibits the use of land without the permission of the authorized person or their authorized representative.

2. Research Method

This research is descriptive in nature, beginning with collecting data related to the problem being discussed. Then, it compiles, classifies, analyzes, and interprets the data to obtain a clear picture of the phenomenon being studied. The approach used is a normative juridical approach, which involves examining secondary data such as legislation, court decisions, and other sources.

3. Results And Discussion

In today's era of globalization and economic liberalization, land plays an increasing role for various purposes, both as a place of residence and for business activities. Consequently, the need for support in the form of legal certainty in the land sector will also increase. Providing legal protection in the land sector requires the availability of written, comprehensive, and clear legal instruments that are implemented consistently in accordance with the spirit and content of their provisions. Facing various real-world situations, land registration is also necessary, allowing land rights holders to easily prove their rights to the land they control, and allowing interested parties, such as prospective buyers and creditors, to obtain necessary information regarding the land subject to legal action. This also allows the government to implement land policies.

Providing legal certainty regarding land rights for all Indonesians is one of the primary objectives of Law Number 5 of 1960 concerning Basic Agrarian Regulations. Consequently, the law instructs the government to conduct *rechtscadaster* registration throughout Indonesia, meaning it aims to guarantee legal certainty for rights holders in their ownership and use of land. The cadastre is an appropriate tool for providing descriptions and identification of land and serves as a continuous record of land rights. It must also be open to the public (public record). This is crucial, especially when linked to one of the principles of land registration, namely the principle of publicity.

In this regard, the provisions for land registration in Indonesia are regulated in Article 19 paragraph (1) of the UUPA, which states: "To guarantee legal certainty, the government shall conduct land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by

Government Regulation." Government Regulation Number 24 of 1997 states in its considerations, under the following words:

1. That increasing sustainable national development requires support for guaranteeing legal certainty in the land sector;
2. That land registration, the implementation of which is assigned to the government by Law Number 5 of 1960 concerning Basic Agrarian Regulations, is a means of providing the intended guarantee of legal certainty;
3. That Government Regulation Number 10 of 1961 concerning Land Registration is deemed unable to fully support the achievement of more tangible results in national development, and therefore requires improvement.

Several key objectives are outlined in Government Regulation No. 24 of 1997 concerning Land Registration, including:

1. Simplifying the process and operational procedures for land registration;
2. Prioritizing land registration for ex-BW lands, customary lands, and lands held by kings' concessions;
3. Preventing forgery of land title certificates and duplicate certificates;
4. Accelerating land registration, aligned with the government's target of implementing land registration throughout Indonesia.

The amendment to Government Regulation No. 24 of 1997 concerning Land Registration will further encourage the public to register their land due to the simplification of land registration procedures. This will have a tangible positive impact, namely optimally achieving the target of land registration in Indonesia, as mandated by Article 19 paragraph (1) of the Basic Agrarian Law. Land registration aims to provide legal certainty to land rights holders, with the evidence produced at the end of the registration process in the form of a land book and a certificate, consisting of a copy of the land book and a measurement letter. The land registration publication system adopted by the Basic Agrarian Law is not a purely negative publication system, but rather a negative publication system with a positive tendency. "Implicitly, strong evidence is required, as stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2) of the UUPA. A purely negative publication system would not utilize a rights registration system.

The UUPA does not explicitly specify the publication system used, but in substance, it can be concluded that the publication system adopted in land registration is a negative publication system containing positive elements. The main characteristic of a negative publication system is that registration does not guarantee that the name registered in the land register cannot be disputed, even with good intentions. The right cannot be disputed if the registered name is the rightful owner. The rights of the registered name are determined by the rights

and purchasers of previous rights; the acquisition of these rights is one link in the chain.

One regulation that aligns with the rechtsverwerking institution in positive law is Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states that a certificate is proof of rights that serves as strong evidence regarding physical data and data. The legal data contained therein, as long as the physical and legal data match those contained in the relevant land survey certificate and land register. Based on the opinions of the legal experts mentioned above, the UUPA firmly adheres to a negative system with a positive tendency in land registration. On the other hand, if we examine the meaning of Article 19 paragraphs (1), (2), (3), and (4) of the UUPA, the statement of a negative system with a positive tendency is clearly evident.

Land is the most valuable and important asset for every human being. Since ancient times, land has been a gift from God, fundamental to maintaining the continuity of human life. Land law in Indonesia is derived from customary law, with every aspect of this law derived from customary law communities, as long as customary law does not conflict with national interests. In various land cases, one of the biggest causes of land disputes is related to land registration. Some issues that consistently arise are:

1. Fake certificates.
2. Fake certificates (genuine but fake).
3. Duplicate certificates.
4. Replacement of damaged or lost certificates.

The Basic Agrarian Law, along with its implementing regulations, aims to ensure legal certainty for land rights throughout Indonesia. When combined with government efforts to reorganize land use, control, and ownership, land registration, or land rights registration, is a crucial tool for achieving legal certainty throughout the Republic of Indonesia and simultaneously contributing to the reorganization of land use, control, and ownership. The Basic Agrarian Law instructs the government to register land, clearly requiring the government to ensure legal certainty. Land registration brings legal certainty because it results in the issuance of a land title, commonly known as a land certificate, to the relevant party, which serves as strong evidence of their land rights. This is where the intent and purpose of land registration intersects with the intent and purpose of the UUPA, which aims to achieve legal certainty regarding land rights, which are generally held by the majority of indigenous people.

To ensure legal certainty, the issuance of certificates of title serves as a strong means of proof. The government has issued implementing regulations to achieve this, namely Government Regulation Number 10 of 1961 concerning Land Registration, which has now been amended by Government Regulation Number

24 of 1997 concerning Land Registration. The implementation of a negative publication system in land registration is usually accompanied by an expired institution in regulations regarding land ownership. The UUPA does not recognize an expired institution originating from the civil law system, while the UUPA is based on customary law, and therefore the legal institutions used in implementing the UUPA are only legal institutions clearly referred to in the UUPA and customary law institutions.

Certificates serve as strong means of proof, as regulated in Government Regulation Number 24 of 1997 concerning Land Registration. Article 32 paragraph (2) stipulates that if a land plot has been legally issued a certificate in the name of the person or legal entity that acquired the land in good faith and actually controls it. The purpose of land registration is to provide legal certainty and legal protection to the rights holder of a plot of land. Therefore, other parties who feel they have rights to the land can no longer demand the implementation of those rights if within 5 (five) years or more. Since the issuance of the certificate, they have not submitted a written objection to the certificate holder and the Head of the relevant Land Office or have not filed a lawsuit with the Court regarding land ownership or the issuance of the certificate.

According to Article 19 paragraph (2) letter c, it is emphasized that a land rights certificate is a document that proves land rights that serves as strong evidence. The certificate consists of a copy of the land book containing legal data and a measurement letter containing physical data of the land rights in question, which are bound together in a single document envelope. Government Regulation Number 24 of 1997 Article 32 paragraph (1) states that "A certificate is a document that serves as proof of rights which is valid as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data contained in the measurement letter and the land title book in question." On the other hand, some parties still claim their rights to certificates already issued by filing written objections or lawsuits with the court. Certificates issued more than five years ago have even been revoked by the State Administrative Court (PTUN). Despite the time limit for third parties to claim rights against already issued certificates, in practice, the courts still accept lawsuits filed by third parties. The District Court and the State Administrative Court's considerations regarding third parties filing lawsuits against certificates are based on the grounds that the ownership of the land subject to the lawsuit remains unclear.

Linking these lawsuits to certificates as strong evidence suggests legal uncertainty over land rights, although this does not necessarily mean that certificates issued by the National Land Agency do not guarantee

legal certainty regarding land rights. Certificates do, in fact, guarantee legal certainty regarding the legal and physical data of the land until the judge declares the legal and physical data contained therein inaccurate. Legal recognition of certificates provides legal certainty but is not absolute. A certificate is strong evidence of rights as part of the implementation of a negative land registration system with positive tendencies. Land registration using the negative publication system does not guarantee the accuracy of the data held by the registration office. Therefore, the person named on the certificate is always exposed to the possibility of lawsuits from other parties who claim to have rights to their land. However, applicable laws and regulations require land registration officials to carry out land registration carefully through the necessary research of the data submitted to them for land registration.

This provision refines and confirms the negative publication system of land registration regulated by the Basic Agrarian Law. Under the negative publication system, the state does not guarantee the accuracy of the data. However, by establishing this time limit, the person named on the certificate will be free from lawsuits after the lapse of five years, and their status as landowner should continue to be protected as long as the land was acquired in good faith and is actually controlled by the rights holder or their attorney.

The guarantee of a certificate as strong evidence in ensuring legal certainty does not stop there; conflicts arise. The difference between a negative publication system and a positive tendency means that other parties are given the opportunity to prove otherwise that a particular land object is theirs in court. This opportunity, which comes from the negative registration system, gives rise to lawsuits against certificates whose legal certainty has been guaranteed. These lawsuits from other parties constitute a separate legal issue from the legal certainty itself. A lawsuit filed against a certificate by another party is accepted by the court, either the District Court or the State Administrative Court, as long as it can prove and refute the truth of the legal and physical data listed in the certificate. The provisions in Article 32 paragraph (2) of Government Regulation Number 24 of 1997 aim to provide legal certainty in a balanced manner to parties who in good faith control a plot of land and are registered as rights holders in the land book, with a certificate as evidence and parties who feel entitled to the land in question are also not ignored, because a period of 5 (five) years is considered sufficient to try to defend their rights, either directly or through the Court. But on the other hand, with the existence of Article 32 paragraph (2) of Government Regulation Number 24 of 1997, there appears to be a change in providing

guarantees of certificate strength that leads to absolute strength, this is basically contrary to the system adopted by the Basic Agrarian Law, namely in Article 19 paragraph (2) letter c. This consideration of absolute strength is not solely accepted by the judge, because the time limit in Article 32 paragraph (2) is still far from expectations, therefore the judge still accepts lawsuits filed by other parties by accepting lawsuits filed with the Court. As long as no court ruling is filed by another party challenging the veracity of the legal and physical data, the certificate remains valid and legally binding as strong evidence. However, if a claim is later filed regarding the certificate, this constitutes a separate legal issue. This means that as long as the veracity of the legal and physical data cannot be disputed, legal certainty continues to guarantee the rights of the certificate holder.

A person who acquires land rights directly acquires ownership of the land, along with obligations and limitations on their ownership rights as mandated by applicable laws and regulations. With regard to these rights, which are inherent in ownership, a legal relationship should not be abolished or annulled. Cancellation can be divided into two types: absolute cancellation, which is an act of cancellation by operation of law, and relative cancellation, which occurs upon request by a specific person or legal entity.

4. Conclusion

Legal protection for landowners whose land has been issued with a certificate in another person's name is granted to the true landowner based on evidence of legal land ownership. This is because the legitimate landowner possesses legal data and directly controls the land. This means that the landowner has the right to freely control the land, and ownership is vested in their heirs as long as it is not transferred to another party. Legal remedies taken by landowners to resolve land disputes involving unilateral ownership and to issue a land ownership certificate include filing for cancellation of the certificate through lawsuits in the District Court or the cancellation of the certificate in the State Administrative Court. However, this does not mean that land title certificates do not guarantee legal certainty, as lawsuits or certificate cancellations are separate issues from legal certainty. As long as there is no judge's decision disputing the validity of the legal and physical data on the certificate, the certificate is considered valid.

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